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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CYCLE BARN, INC., a Washington  
corporation, d/b/a SMOKEY POINT CYCLE  
BARN

Plaintiff,

v.

ARCTIC CAT SALES INC., a Minnesota  
corporation,

Defendant.

Case No. C10-0035 MJP

**ORDER DENYING PLAINTIFF'S  
MOTION TO SUBMIT  
ADDITIONAL EVIDENCE AND  
GRANTING DEFENDANT'S  
MOTION TO DISMISS**

This matter comes before the Court on Defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 7.) Having reviewed the motion, Plaintiff's response (Dkt. No. 10), Defendant's reply (Dkt. No. 17), and all papers submitted in support thereof, the Court GRANTS the Defendant's motion for the reasons set forth below. In conjunction with its opposition to Defendant's motion to dismiss, Plaintiff filed a motion to submit additional evidence. (Dkt. No. 18.) Having reviewed the motion, Defendant's response (Dkt. No. 24), Plaintiff's reply (Dkt. No. 25), and all papers submitted in support thereof, the Court DENIES the Plaintiff's motion for the reasons set forth below.

**Background**

On January 1, 2003, Plaintiff Cycle Barn, Inc. ("Cycle Barn"), a motorsports dealer, and Defendant Arctic Cat Sales, Inc. ("Arctic Cat"), a motorsports manufacturer, entered into a

1 franchise agreement to sell motorsports vehicles and related items. (Amended Compl.  
 2 (hereinafter “Compl.”) ¶¶ 3.1, 3.2.) The parties agreed that upon termination of the franchise,  
 3 Arctic Cat would have the “right, but not the obligation” to repurchase its products from Cycle  
 4 Barn. (Dkt. No. 7 at 4; Stokke Decl., Ex. A ¶ 18; id. Ex. B ¶ 18.) Although the parties’ final  
 5 written contract had expired, their business relationship continued until “July and August 2009”  
 6 when Cycle Barn unilaterally terminated the agreement. (Stokke Decl., Ex. B; Compl. ¶ 3.6.)  
 7 Plaintiff alleges the relationship continued to be “governed by terms and conditions which [were]  
 8 similar to the relevant provisions of the initial agreement.” (Compl. ¶ 3.2.)

9       In July, 2003, the Washington State Legislature enacted R.C.W. 46.93, Motorsports  
 10 Vehicles—Dealer and Manufacturer Franchises. Upon a manufacturer’s termination of a  
 11 franchise, the statute obligated the manufacturer to repurchase products remaining with its  
 12 dealer. See R.C.W. § 46.93.080(1) (amended 2009). Manufacturers then had 90 days from  
 13 when the dealers returned products to pay the dealers. See R.C.W. § 46.93.080(3) (amended  
 14 2009). On April 25, 2009, the Legislature amended the statute. See H.B. 1664, 61st Leg., Reg.  
 15 Sess. (Wash. 2009). The current version became effective on July 26, 2009. See R.C.W. 46.93.  
 16 The statute now obligates manufacturers to repurchase products upon franchise termination even  
 17 if the dealer terminates, and the 90 day pay period begins at termination. See R.C.W. 46.93.080.

18       More than 90 days has elapsed since the “July and August, 2009” termination date.  
 19 (Compl. ¶¶ 3.6, 3.7.) Arctic Cat refuses to repurchase its products from Cycle Barn. (Id. ¶ 3.8.)  
 20 It does not appear that Cycle Barn has tendered any products to Arctic Cat. (Id. ¶ 3.9.) Cycle  
 21 Barn seeks a declaratory judgment requiring Arctic Cat to repurchase its products from Cycle  
 22 Barn pursuant to the current R.C.W. 46.93.080. Cycle Barn also requests damages resulting  
 23 from (1) Arctic Cat’s alleged violation of R.C.W. 46.93.080, and (2) Arctic Cat’s alleged “unfair  
 24 practices” under R.C.W. 46.93.170 and R.C.W. 19.86. (Compl. at 4-5.) Arctic Cat moves to  
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1 dismiss the complaint on the theory that retroactively applying the statute is unconstitutional.  
2 (Dkt. No. 7.)

3 A couple weeks after briefing on the motion to dismiss was complete, Cycle Barn  
4 discovered a July 30, 2009, franchise contract between itself and Arctic Cat. (Boltz Decl., Ex. A;  
5 Supp. Southee Decl. (Dkt. No. 20), Ex. A.) Cycle Barn moves to submit this contract as  
6 evidence in support of its opposition to Arctic Cat's 12(b)(6) motion. (Dkt. No. 18.)

## Analysis

### **1. Motion to dismiss standard**

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the conduct alleged.” Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 545) (further noting that plausibility lies somewhere between allegations that are “merely consistent” with liability and a “probability requirement”); see also Moss v. United States Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (“In sum, for a complaint to survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”) (citing Iqbal at 1949). The Court must accept plaintiffs’ factual allegations as true, but need not accord the same deference to legal conclusions. Id. at 1949-150 (citing Twombly at 555). Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” Iqbal. at 1950 (citation omitted).

Generally, “[t]he Court may not consider matters outside the pleadings” without converting the 12(b)(6) motion into a motion for summary judgment. In re Hawaiian &

1     Guamanian Cabotage Antitrust Litig., 647 F. Supp. 2d 1250, 1267 (W.D. Wash. 2009); see also  
 2     Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); see Fed. R. Civ. P. 12(d). There  
 3     are two exceptions to this rule. First, the Court may consider documents not physically attached  
 4     to the complaint if the documents’ “authenticity . . . is not contested and the plaintiff’s complaint  
 5     necessarily relies on them.” Lee, 250 F.3d at 688 (citation omitted). Second, the Court may  
 6     “take judicial notice of matters of public record.” Id.

7     2.     Cycle Barn’s motion to submit additional evidence

8         Cycle Barn moves to submit additional evidence in support of its opposition to Arctic  
 9     Cat’s motion to dismiss. (Dkt. No. 18.) Specifically, Cycle Barn asks the Court to consider a  
 10    recently discovered contract between the parties that was signed after R.C.W. 46.93.080 was  
 11    amended. (Id.) The dealer cites Fed. R. Civ. P. 12(d), 56(f), 6(b)(1), and 60(b)(2), (6) as the  
 12    authority permitting the Court to consider this new information. (See Dkt. No. 18; see also Dkt.  
 13    No. 25.) None of these rules are persuasive in this case. The additional contract is not pled in  
 14    the Complaint and, therefore, it cannot be a part of this Court’s Rule 12(b)(6) analysis. The  
 15    Court DENIES Cycle Barn’s motion to submit additional evidence.

16     3.     Impairment of contracts

17         Arctic Cat contends that Cycle Barn’s complaint must be dismissed because its request to  
 18    apply retroactively R.C.W. 46.93.080 would be an unconstitutional impairment of the parties’  
 19    agreement. (Dkt. No. 7 at 2.); see U.S. Const. art. I, § 10, cl. 1; see Wash. Const. art. I, § 23.  
 20  
 21    The Court agrees.

22         Under the United States Contracts Clause, “No state shall . . . pass any . . . law impairing  
 23    the obligations of contracts.” U.S. Const. art. I, § 10, cl. 1. Washington State similarly prohibits  
 24    the enactment of any “law impairing the obligations of contracts.” Wash. Const. art. I, § 23. “It  
 25    is well-settled that these state and federal constitutional provisions are coextensive and are given  
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1 the same effect.” Pierce County v. State, 159 Wn.2d 16, 28 n.5 (2006). “[I]n light of the  
 2 similarity in language,” Washington courts “find cases construing the federal provision  
 3 persuasive in construing the state clause.” Carlstrom v. State, 103 Wn.2d 391, 394 (1985).  
 4 Although the Contracts Clause facially appears absolute, it must be weighed against the State’s  
 5 inherent power to safeguard its people’s interests. See RUI One Corp. v. City of Berkeley, 371  
 6 F.3d 1137, 1147 (9th Cir. 2004) (citation omitted).

7       The Court uses a three-step inquiry to determine whether a statute violates the Contract  
 8 Clause. See Washington Health Care Ass'n v. Arnold-Williams, 601 F. Supp. 2d 1224, 1234  
 9 (W.D. Wash. 2009) (citing RUI One Corp., 371 F.3d at 1147). The steps, addressed in order, are:  
 10 (1) “Whether the state law has, in fact, operated as a substantial impairment of a contractual  
 11 relationship”; (2) “Whether the State, in justification, [has] a significant and legitimate public  
 12 purpose behind the regulation; and (3) “Whether the adjustment of the rights and responsibilities  
 13 of contracting parties is based upon reasonable conditions and is of a character appropriate to the  
 14 public purpose justifying the legislation’s adoption.” 371 F.3d at 1147 (citation omitted).  
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16           A.     Substantial impairment

17       The amended version of R.C.W. 46.93.080 operates as a substantial impairment of Arctic  
 18 Cat and Cycle Barn’s agreement. See Arnold-Williams, 601 F. Supp. 2d at 1234 (factor one). In  
 19 analyzing this factor, the Court asks three questions: (1) “Whether there was a contractual  
 20 agreement regarding the specific . . . terms allegedly at issue”; (2) “Whether a change in law  
 21 impairs that contractual relationship”; and (3) “Whether the impairment is substantial.” RUI One  
 22 Corp., 371 F.3d at 1147 (citations omitted).

23       First, there is a contractual agreement regarding the specific terms at issue. The  
 24 amendment concentrates on repurchase obligations upon a franchise’s termination, see R.C.W.  
 25 46.93.080, and the parties’ contract and ongoing agreement included terms regarding Arctic  
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Cat's "right, but not obligation" to repurchase its products upon the termination of the agreement, (Dkt. No. 7 at 4; Stokke Decl., Ex. A ¶ 18; id., Ex. B ¶ 18.) Second, the current statute impairs the contractual agreement by converting Arctic Cat's right to repurchase into an obligation. Third, this impairment is substantial. Since January 1, 2003, the parties operated under their bargained-for contract (or the terms therein), under which Arctic Cat had no obligation to repurchase its products from Cycle Barn. (Stokke Decl., Ex. A ¶ 18; id., Ex. B ¶ 18.) Under the new law, Arctic Cat not only has an obligation to repurchase its products, but it must do so within 90 days of Cycle Barn's unilateral decision to terminate. See R.C.W. 49.93.080. This change constitutes substantial impairment.

B. Public purpose

R.C.W. 46.93 lacks the requisite significant and legitimate public purpose to justify its substantial contractual impairment in this case. See Arnold-Williams, 601 F. Supp. 2d at 1234 (factor two). The Court may weigh five factors in determining whether a sufficient public purpose exists. See Chico's Pizza Franchises, Inc. v. Sisemore, 544 F. Supp. 248, 249 (E.D. Wash. 1981) (citing Allied Structural Steel Co., 438 U.S. at 247-50). The factors, addressed in order, are: "(1) the emergency nature of the legislation; (2) whether the state had previously regulated the subject activity; (3) whether the impact is generalized or specifically directed toward a narrow class; (4) whether the reliance on pre-existing rights was both actual and reasonable; and (5) whether the challenged law worked a severe, permanent, and immediate change in those relationships reasonably relied upon." Chico's Pizza, 544 F. Supp. at 249 (citation omitted).

First, the Court rejects Cycle Barn's assertion that the amendment at issue resulted from a state of economic emergency. (See Dkt. No. 10 at 7.); See Chico's Pizza, 544 F. Supp. at 249 (factor one). The assertion relies on inadmissible declarations of Mr. Halstead, a lobbyist, and

1 Mr. Condotta, a State Representative, attached to Cycle Barn's response brief. In addition to  
 2 being inappropriate to consider on a Rule 12(b)(6) motion, the declarations are also inadmissible  
 3 under Washington law. See City of Yakima v. Int'l Ass'n of Fire Fighters, 117 Wn.2d 655, 677  
 4 (1991) (legislative intent in passing a particular bill cannot be illustrated through a legislator's  
 5 affidavit). Cycle Barn offers no proper evidence of emergency in this case.

6 Second, Washington did not regulate motorsports franchises prior to the parties' initial  
 7 agreement, nor does the State heavily regulate motorsports franchises now. See Chico's Pizza,  
 8 544 F. Supp. at 249 (factor two). In Energy Reserves Group, Inc. v. Kansas Power and Light Co.,  
 9 459 U.S. 400, 413 (1983), the Court upheld a Kansas act partly due to "the fact that the  
 10 parties [were] operating in a heavily regulated industry." See also Veix v. Sixth Ward Bldg. &  
 11 Loan Ass'n of Newark, 310 U.S. 32, 37 (1940) (upholding a New Jersey statute after noting it  
 12 was part of a long series of regulations dating back almost 30 years). Here, the parties contracted  
 13 on January 1, 2003, but the original motorsports statute did not take effect until July 27, 2003.  
 14 (Compl. ¶ 3.2.); see R.C.W. 46.93. Further, the statute at issue has been in effect for fewer than  
 15 seven years and is the only Washington statute regulating motorsports franchises. Washington's  
 16 limited regulation of motorsports franchises does not support a legitimate public purpose in this  
 17 case.

19 Third, Cycle Barn contends that R.C.W. 46.93.080 "serves a broad generalized economic  
 20 and social purpose." (Dkt. No. 10 at 9); see also R.C.W. 46.93.010; see Chico's Pizza, 544 F.  
 21 Supp. at 249 (factor three). The Court disagrees. In Chico's Pizza, the court concluded that  
 22 despite the challenged act's potential long term and widespread benefit, "the immediate purpose .  
 23 . . was to focus on an extremely narrow band of commercial activity." Id. at 250. Here, the  
 24 statute's partial intent to impact Washington's general economy does not erase the fact that the  
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1 amendment directly affects only the narrow class of motorsports manufacturers and dealers. See  
 2 R.C.W. 46.93.010.

3 Fourth, Arctic Cat actually and reasonably relied on its “right, but not obligation” to  
 4 repurchase. See Chico’s Pizza, 544 F. Supp. at 249 (factor four). Reliance is established when it  
 5 appears “that the parties contemplated their respective positions, bargained for the projected  
 6 benefits, and relied upon the binding nature of the resulting contract,” and there is no evidence  
 7 that the agreement was “speculative or unsettled.” See id. at 250. Here, Cycle Barn offers no  
 8 evidence that the parties’ agreement was not binding or that Arctic Cat should not have relied on  
 9 it up until termination. The Court rejects Cycle Barn’s unsupported argument that Arctic Cat  
 10 waived its right to argue reliance when it failed to terminate the agreement after the amendments  
 11 were approved in late April and before Cycle Barn terminated in July or August. (Dkt. No. 10 at  
 12 10.)

13 Fifth, R.C.W. 46.93.080 worked a severe, permanent, and immediate change on the  
 14 parties’ relationship. See Chico’s Pizza, 544 F. Supp. at 249 (factor five). When Chico’s Pizza  
 15 found that its act severely, permanently, and immediately impacted the contract at issue, the  
 16 court stated, “As of the stroke of midnight, such contractual expectations became awash in a sea  
 17 of uncertainty . . . .” The same is true in this case. The law converted a bargained-for right into  
 18 an unbargained-for obligation. That is a severe change for any business relationship. Further,  
 19 the impairment is permanent because as long as the relationship continues, and even after  
 20 termination, Arctic Cat has an obligation to repurchase. Last, the parties’ relationship changed  
 21 immediately. On July 26, 2009, Arctic Cat’s contractual choice to repurchase became void and  
 22 Cycle Barn gained an unbargained-for benefit. The 90 day pay period began running  
 23 immediately after Cycle Barn terminated the franchise. The changes are severe, permanent, and  
 24 immediate in this case.

1 There is no significant and legitimate public purpose behind RCW 46.93 that justifies the  
2 substantial impairment of Cycle Barn and Arctic Cat's ongoing contractual relationship.

3 C. Reasonable adjustment

4 Because no significant and legitimate purpose justifying the substantial impairment of the  
5 parties' contract has been identified, the Court need not address the parties' adjustments in  
6 relation to the State's justification. See Campanelli v. Allstate Life Ins. Co., 322 F.3d 1086,  
7 1098 (9th Cir. 2003) (citing Energy Reserves, 459 U.S. at 412); see Arnold-Williams, 601 F.  
8 Supp. 2d at 1234 (factor three).

9 **Conclusion**

10 First, the Court DENIES Cycle Barn's motion (Dkt. No. 18) to submit additional  
11 evidence. Second, confining the Court's analysis to the amended complaint (Dkt. No. 16), the  
12 Court GRANTS Arctic Cat's motion to dismiss (Dkt. No. 7) pursuant to Fed. R. Civ. P. 12(b)(6),  
13 but does so without prejudice. The Court grants Cycle Barn leave to file an amended complaint  
14 in accordance with the terms of this Order within 20 days. If Plaintiff fails to present a viable  
15 complaint within the permitted time, judgment shall be entered.

17 The Clerk shall transmit a copy of this Order to all counsel of record.

18 Dated this 24th day of March, 2010.

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Marsha J. Pechman  
United States District Judge